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9

10 UNITED STATES DISTRICT COURT

11 DISTRICT OF NEVADA
12

13 DAVID ALVARADO GOMEZ, an
14 individual; LUIS CARMONA ESCOBAR,
an individual; LEONEL ALFARO ZAYAS,
15 an individual,

16 Plaintiffs,

17 vs.

18 JAROSLAV NOVOTNY, an individual;
19 KLC GLOBAL SERVICES LTD, a Foreign
Corporation; DOES I through X, inclusive;
20 and ROE CORPORATIONS I through X,
inclusive,
21

22 Defendants.
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CASE NO.

**NOTICE OF REMOVAL BY DEFENDANT,
JAROSLAV NOVOTNY**

Complaint Filed: February 11, 2019

24 TO THE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE
25 DISTRICT OF NEVADA:

26 PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. §1332 and §1441(b),
27 Defendant, JAROSLAV NOVOTNY, contemporaneously with the filing of this Notice, is
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1 effecting the removal of the below-referenced action from the District Court for Clark
2 County, Nevada to the United States District Court for the District of Nevada. The removal
3 is based, specifically, on the following grounds:

4 **PLEADINGS, PROCESS, AND ORDERS**

5 1. On February 11, 2019, Plaintiffs, DAVID ALVARDO GOMEZ, LUIS
6 CARMONA ESCOBAR, and LEONEL ALFARO ZAYAS, commenced the immediate civil
7 action in the District Court for Clark County, Nevada by filing a Complaint therein entitled
8 DAVID ALVARDO GOMEZ, LUIS CARMONA ESCOBAR, and LEONEL ALFARO ZAYAS
9 v. JAROSLAV NOVOTNY, KLC GLOBAL SERVICES, LTD., DOES I through X inclusive,
10 and ROE CORPORATIONS I through X, inclusive, Case No. A-19-789134-C. True and
11 correct copies of the following documents are attached hereto and incorporated herein by
12 reference:

- 13 a. Summons - Exhibit "A;" and
14 b. Complaint - Exhibit "B."

15 2. The Summons and Complaint were served on JAROSLAV NOVOTNY via
16 the Department of Motor Vehicles, pursuant to NRS 14.070(2), on or around April 12,
17 2019.

18 3. JAROSLAV NOVOTNY has yet to file and serve his Answer to Plaintiffs'
19 Complaint, but will do so consistent with FRCP 81(c)(2).

20 4. The Summons and Complaint constitute all process, pleadings, and orders
21 served upon Defendant in this matter (See, Exhibits "A" and "B").

22 5. A copy of this Notice of Removal is being served on Plaintiffs, and a copy is
23 being filed with the state court. See, 28 U.S.C. §1446(d).

24 6. This is a civil action over which this Court has original jurisdiction under 28
25 U.S.C. §1332, in that it is a civil action where the matter is between citizens of different
26 states and the controversy exceeds the sum of \$75,000.00, exclusive of interest and
27 costs. Accordingly, this action is one that may be removed to this Court by JAROSLAV
28 NOVOTNY pursuant to 28 U.S.C. §1441.

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2 7. Pursuant to 28 U.S.C. § 1446(b)(2)(A), Defendant, KLC GLOBAL
3 SERVICES, LTD., joins in and consents to this Notice of Removal.

4 **DIVERSITY**

5 **A. Citizenship**

6 8. Plaintiffs were, at the time of the filing of this action, and presently remain,
7 residents and citizens of the State of Nevada. See, Exhibit "B" - Paragraphs 1, 2, and 3.

8 9. JAROSLAV NOVOTNY is a resident of the state of Illinois. Plaintiffs'
9 Complaint specifically identifies JAROSLAV NOVOTNY as a resident of Illinois who
10 resided therein at all material times. See, Exhibit "B" - Paragraph 4. The Summons and
11 Complaint were also served upon JAROSLAV NOVOTNY by serving him at his home
12 address of 401 North Keswick Court, Round Lake, Illinois 60073. See, Affidavit of
13 Compliance - Paragraph 4 (Attached hereto as Exhibit "C").

14 10. KLC GLOBAL SERVICES, LTD. was incorporated in the state of Illinois with
15 its principal place of business in Illinois and Plaintiffs acknowledge same. See, Exhibit
16 "B" - Paragraph 6. Accordingly, KLC GLOBAL SERVICES, LTD. is a citizen of the state
17 of Illinois.

18 11. Complete diversity of citizenship therefore exists as between Plaintiffs and
19 Defendants.

20 **B. Fictitious Does**

21 12. Defendants, DOES I through X and ROE CORPORATIONS I through X,
22 are wholly fictitious. The Complaint does not set forth the identity or status of any said
23 fictitious defendants. The naming of said fictitious defendants does not destroy the
24 diversity of citizenship between the parties in this action and are to be disregarded. 28
25 U.S.C. §1441(b)(1); Newcombe v. Adolf Coors Co., 157 F.3d 686, 690-91 (9th Cir.
26 1998). Accordingly, the mere fact the Complaint references fictitious defendants does
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1 not destroy diversity jurisdiction and does not preclude this action from being properly
2 removed to this Court.

3 AMOUNT IN CONTROVERSY

4 13. Plaintiffs' Complaint sets forth causes of action for (1) Negligence,
5 (2) Negligence per se, (3) Negligent entrustment of vehicle to Defendant, and (4)
6 Negligent hiring, training, retention, and supervision. See, Exhibit "B." Plaintiffs allege
7 that on or about November 3, 2017, JAROSLAV NOVOTNY was driving a 2016
8 Freightliner tractor trailer, owned by KLC GLOBAL SERVICES, LTD. It is further alleged
9 that JAROSLAV NOVOTNY, in the course and scope of his employment, backed into
10 Plaintiffs' vehicle thereby causing injury to Plaintiffs. See, Exhibit "B" - Paragraph 9.

11 14. The amount in controversy exceeds \$75,000.00. A defendant can
12 establish the amount in controversy requirement by showing that it is "facially apparent"
13 based on the allegations in the complaint. Singer v. State Farm Mut. Auto Ins. Co., 116
14 F.3d 373, 377 (9th Cir. 1997). The amount in controversy calculation includes all
15 damages that are alleged in a complaint, including economic damages, non-economic
16 damages, punitive damages, and recoverable attorneys' fees. See generally,
17 Guglielmino v. McKee Foods Corp., 506 F.3d 696, 700 (9th Cir. 2007). Here, the
18 Complaint contends that the matter is exempt from the state court arbitration program
19 because a jury award will purportedly exceed \$50,000.00. See, Exhibit "B". Plaintiffs,
20 upon seeking an exemption from the Nevada arbitration program, specifically alleged
21 that DAVID ALVARADO GOMEZ has incurred \$62,913.36 in medical expenses as a
22 result of the incident, that LUIS CARMONA ESCOBAR has incurred \$4,355.00 in
23 medical expenses, and that LEONEL ALFARO ZAYAS has incurred \$5,575.35 in
24 medical expenses for a subtotal of \$72,843.71. These sums are exclusive of other
25 general damages, compensatory damages, special damages, attorneys' fees and costs,
26 and any other and further relief the courts may deem just and proper. See, Plaintiffs'
27 Request for Exemption from Arbitration - Exhibit "1" (Attached hereto as Exhibit "D"). As
28 such, Plaintiffs' damages, as alleged, exceed \$75,000.00.

TIMELINESS OF REMOVAL

15. This Notice of Removal is timely filed in that it has been filed within thirty (30) days after receipt of Plaintiffs' Complaint, which indicated that the matter is removable pursuant to 28 U.S.C. §1446(b)(1). The Summons and Complaint were served on JAROSLAV NOVOTNY via the Department of Motor Vehicles pursuant to NRS 14.070(2) on or around April 12, 2019. Further, the instant removal is within one (1) year of the commencement of the underlying action as required by 28 U.S.C. §1446(c)(1). As noted, Plaintiffs commenced this action on February 11, 2019.

16. For the foregoing reasons, this Court has original jurisdiction under 28 U.S.C. §1332 and §1441(b).

28 U.S.C. § 1446(b)(2)(A) CONSENT AND JOINDER

17. Pursuant to 28 U.S.C. §1446(b)(2)(A), Defendant, KLC GLOBAL SERVICES, LTD., joins in and consents to this Notice of Removal.

JURY DEMAND

Pursuant to FRCP 38, Defendant, JAROSLAV NOVOTNY, respectfully demands a jury trial on all triable issues in this action.

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1 CONCLUSION

2 Defendants, JAROSLAV NOVOTNY, respectfully requests that the above-entitled
3 action now pending in the District Court for Clark County, Nevada be removed to this
4 Court pursuant to 28 U.S.C. §1332 and §1441(b).

5 DATED this 13th day of May, 2019.

6 Respectfully submitted,

7 LEWIS BRISBOIS BISGAARD & SMITH LLP
8

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20 KLC GLOBAL SERVICES, LTD.
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CERTIFICATE OF SERVICE

Pursuant to FRCP 5(b), I certify that I am an employee of Lewis Brisbois Bisgaard & Smith, LLP, and that on this 13th day of May, 2019, I did cause a true and correct copy of this NOTICE OF REMOVAL BY DEFENDANT, JAROSLAV NOVOTNY, to be electronically served as follows:

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By /s/ Lori Tollerud
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